

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

BANK OF AMERICA, N.A.,

Plaintiff,

vs.

SUNSET RIDGE LIMITED HOMEOWNERS
ASSOCIATION, *et al.*,

Defendants.

Case No.: 2:16-cv-00797-GMN-NJK

ORDER

Pending before the Court is the Motion for Partial Summary Judgment, (ECF No. 58), filed by Bank of America, N.A. (“Plaintiff”). Defendant SFR Investments Pool 1, LLC (“SFR”) and Defendant Sunset Ridge Limited Homeowners Association’s (“HOA”) filed Responses, (ECF Nos. 68, 69), and Plaintiff filed a Reply, (ECF No. 71).

Also pending before the Court is SFR’s Motion for Summary Judgment, (ECF No. 59). Plaintiff filed a Response, (ECF No. 67), and SFR filed a Reply, (ECF No. 72).

Also pending before the Court is HOA’s Motion for Summary Judgment, (ECF No. 60). Plaintiff filed a Response, (ECF No. 66), and HOA filed a Reply, (ECF No. 70).

Also pending before the Court is Plaintiff’s Motion for Leave to File Supplemental Authority, (ECF No. 75). SFR filed a Response, (ECF No. 76), and Plaintiff filed a Reply, (ECF No. 79).¹

I. BACKGROUND

This case arises from the non-judicial foreclosure on real property located at 10108 Glen Aire Avenue, Las Vegas, Nevada 89148 (the “Property”). (*See* Compl. ¶ 5, ECF No. 1); (*See*

¹ The Court is aware of the authority cited in Plaintiff’s Motion for Leave to File Supplemental Authority, (ECF No. 75). Accordingly, the Court **DENIES** the Motion as moot.

1 Deed of Trust, Ex. A to Pl.'s Mot. Partial Summ. J. ("MPSJ"), ECF No. 58-1). In 2008, Paul
2 Wyklige and Lin Teng (collectively "Borrowers") purchased the Property by way of a loan in
3 the amount of \$242,705.00, secured by a deed of trust (the "DOT"). (*Id.*). Countrywide KB
4 Home Loans, LLC served as the original lender for the DOT, and Mortgage Electronic
5 Registration System, Inc. was the nominee-beneficiary on its behalf. (*Id.*). The DOT was
6 assigned to BAC Home Loans Servicing LP ("BAC") on May 18, 2011. (Assignment, Ex. C to
7 Pl.'s MPSJ, ECF No. 58-3). BAC subsequently merged with Plaintiff. (Merger Certificate, Ex.
8 D to Pl.'s MPSJ, ECF No. 58-4).

9 Upon the Borrowers' failure to stay current on payment obligations, Assessment
10 Management Services ("AMS") on behalf of HOA, initiated foreclosure proceedings by
11 recording a notice of delinquent assessment lien and a subsequent notice of default and election
12 to sell. (*See* Notice of Delinquent Assessment Lien, Ex. E to Pl.'s MPSJ, ECF No. 58-5);
13 (Notice of Default, Ex. F to Pl.'s MPSJ, ECF No. 58-6).

14 On September 12, 2011, the law firm Miles, Bauer, Bergstrom & Winters LLP ("Miles
15 Bauer"), on Plaintiff's behalf, sent a letter to HOA and AMS, requesting a ledger with the
16 amount of HOA's superpriority lien. (*See* Request for Accounting, Ex. 1 to Miles Aff., ECF
17 No. 58-8). AMS accordingly responded with a ledger. (*See* Statement of Account, Ex. 2 to
18 Miles Aff., ECF No. 58-8). Miles Bauer, on behalf of Plaintiff, subsequently delivered a check
19 to AMS for \$198.00, based on the provided ledger, purportedly representing nine months'
20 worth of HOA assessments. (*See* Tender Letter, Ex. 3 to Miles Aff., ECF No. 58-8).

21 Nevertheless, AMS proceeded with the foreclosure by recording a notice of foreclosure
22 sale and foreclosing on the Property. (*See* Notice of Foreclosure Sale, Ex. G to Pl.'s MPSJ,
23 ECF No. 58-7). On August 21, 2013, SFR recorded a foreclosure deed, stating it purchased the
24 Property for \$18,000. (Foreclosure Deed, Ex. I to Pl.'s MPSJ, ECF No. 58-9).

1 On April 8, 2016, Plaintiff filed its Complaint including the following claims (1) quiet
2 title and declaratory relief against all defendants; (2) breach of NRS 116.1113 against HOA and
3 AMS; (3) wrongful foreclosure against HOA and AMS; and (4) injunctive relief against SFR.
4 (Compl. ¶¶ 29–78). SFR subsequently filed crossclaims and counterclaims against Plaintiff and
5 Borrowers, respectively, for (1) declaratory relief and quiet title, and (2) injunctive relief. (*See*
6 Answer ¶¶ 39–53, ECF No. 27).

7 **II. LEGAL STANDARD**

8 The Federal Rules of Civil Procedure provide for summary adjudication when the
9 pleadings, depositions, answers to interrogatories, and admissions on file, together with the
10 affidavits, if any, show that “there is no genuine dispute as to any material fact and the movant
11 is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). Material facts are those that
12 may affect the outcome of the case. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248
13 (1986). A dispute as to a material fact is genuine if there is sufficient evidence for a reasonable
14 jury to return a verdict for the nonmoving party. *See id.* “Summary judgment is inappropriate if
15 reasonable jurors, drawing all inferences in favor of the nonmoving party, could return a verdict
16 in the nonmoving party’s favor.” *Diaz v. Eagle Produce Ltd. P’ship*, 521 F.3d 1201, 1207 (9th
17 Cir. 2008) (citing *United States v. Shumway*, 199 F.3d 1093, 1103–04 (9th Cir. 1999)). A
18 principal purpose of summary judgment is “to isolate and dispose of factually unsupported
19 claims.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–24 (1986).

20 In determining summary judgment, a court applies a burden-shifting analysis. “When
21 the party moving for summary judgment would bear the burden of proof at trial, it must come
22 forward with evidence which would entitle it to a directed verdict if the evidence went
23 uncontroverted at trial. In such a case, the moving party has the initial burden of establishing
24 the absence of a genuine issue of fact on each issue material to its case.” *C.A.R. Transp.*
25 *Brokerage Co. v. Darden Rests., Inc.*, 213 F.3d 474, 480 (9th Cir. 2000) (citations omitted). In

1 contrast, when the nonmoving party bears the burden of proving the claim or defense, the
2 moving party can meet its burden in two ways: (1) by presenting evidence to negate an
3 essential element of the nonmoving party's case; or (2) by demonstrating that the nonmoving
4 party failed to make a showing sufficient to establish an element essential to that party's case
5 on which that party will bear the burden of proof at trial. *See Celotex Corp.*, 477 U.S. at 323–
6 24. If the moving party fails to meet its initial burden, summary judgment must be denied and
7 the court need not consider the nonmoving party's evidence. *See Adickes v. S.H. Kress & Co.*,
8 398 U.S. 144, 159–60 (1970).

9 If the moving party satisfies its initial burden, the burden then shifts to the opposing
10 party to establish that a genuine issue of material fact exists. *See Matsushita Elec. Indus. Co. v.*
11 *Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). To establish the existence of a factual dispute,
12 the opposing party need not establish a material issue of fact conclusively in its favor. It is
13 sufficient that “the claimed factual dispute be shown to require a jury or judge to resolve the
14 parties’ differing versions of the truth at trial.” *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors*
15 *Ass’n*, 809 F.2d 626, 631 (9th Cir. 1987). In other words, the nonmoving party cannot avoid
16 summary judgment by relying solely on conclusory allegations that are unsupported by factual
17 data. *See Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). Instead, the opposition must go
18 beyond the assertions and allegations of the pleadings and set forth specific facts by producing
19 competent evidence that shows a genuine issue for trial. *See Celotex Corp.*, 477 U.S. at 324.
20 At summary judgment, a court’s function is not to weigh the evidence and determine the truth
21 but to determine whether there is a genuine issue for trial. *See Anderson*, 477 U.S. at 249. The
22 evidence of the nonmovant is “to be believed, and all justifiable inferences are to be drawn in
23 his favor.” *Id.* at 255. But if the evidence of the nonmoving party is merely colorable or is not
24 significantly probative, summary judgment may be granted. *See id.* at 249–50.

1 **III. DISCUSSION**

2 Plaintiff moves for summary judgment on its declaratory relief claim against SFR
3 asserting that the DOT survived because the foreclosure was conducted pursuant to a facially
4 unconstitutional statute. (Pl.’s MPSJ 6:3–13:9, ECF No. 58). Plaintiff further argues, *inter alia*,
5 that summary judgment is warranted because Plaintiff properly tendered the superpriority
6 portion of HOA’s lien prior to the Property’s foreclosure sale. (*Id.* 13:10–17:27).

7 SFR moves for summary judgment on its declaratory and injunctive relief claims against
8 Plaintiff and Borrowers, arguing that *Bourne Valley v. Wells Fargo Bank N.A.*, 832 F.3d 1154,
9 (9th Cir. 2016), has been superseded and was never dispositive. (SFR’s MSJ 7:4–10:25, ECF
10 No. 59). SFR further contends that Plaintiff lacks standing to enforce the DOT and therefore its
11 quiet title claim must fail.² (SFR’s Resp. 7:21–11:7, ECF No. 69).

12 HOA moves for summary judgment against Plaintiff on its declaratory relief claim
13 arguing that NRS Chapter 116, as interpreted by the Nevada Supreme Court, is constitutional
14 and thus, the foreclosure sale was valid. (HOA’s MSJ 6:22–9:17, ECF No. 60). HOA further
15 argues that it is entitled to summary judgment on Plaintiff’s claims for breach of NRS 116.1113
16 and wrongful foreclosure because AMS complied with the notice and recording requirements
17 of NRS Chapter 116 “as it existed at the time of the sale.” (*Id.* 10:20–11:25). Lastly, HOA
18 contends that the Miles Bauer check was insufficient to discharge the superpriority lien because
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21 ² SFR also argues that the Court must exclude Plaintiff’s exhibits and affidavit purporting to demonstrate
22 evidence of tender (collectively the “Miles Bauer Affidavit”) on the following grounds: (1) the exhibits are not
23 properly authenticated; (2) the exhibits’ affiant Adam Kendis is without personal knowledge of the attached
24 records; and (3) Plaintiff failed to identify Kendis as a witness in its initial disclosures. (SFR’s Resp. 4:12–6:10,
25 ECF No. 69). The Court previously considered and rejected each of these arguments in *Bank of Am., N.A. v.*
Lake Mead Court Homeowners’ Ass’n, No. 2:16-cv-00504-GMN-NJK, 2019 WL 208864, at *5–7 (D. Nev. Jan.
15, 2019). For the reasons stated therein, SFR’s arguments are without merit. Moreover, the Court is satisfied
that the contents of the Miles Bauer Affidavit could be provided in admissible form at trial. *See Fraser v.*
Goodale, 342 F.3d 1032, 1036 (9th Cir. 2003) (“At the summary judgment stage, we do not focus on
the admissibility of the evidence’s form. We instead focus on the admissibility of its contents.”).

1 the check did not account for fees and costs. (*Id.* 12:1–13:16); (HOA’s Resp. 11:8–12:20, ECF
2 No. 68). The Court will address the parties’ arguments in turn.

3 **A. Constitutionality of NRS Chapter 116**

4 Plaintiff argues that the Ninth Circuit’s decision in *Bourne Valley*, renders NRS Chapter
5 116 void as a violation of due process, thus invalidating the Property’s 2013 foreclosure sale
6 under that statutory scheme. (Pl.’s MPSJ 6:3–13:9). In *Bourne Valley*, the Ninth Circuit held
7 that NRS 116.3116’s notice provisions violated lenders’ due process rights because the scheme
8 “shifted the burden of ensuring adequate notice from the foreclosing homeowners’ association
9 to a mortgage lender.” *Bourne Valley*, 832 F.3d at 1159. The Ninth Circuit, interpreting
10 Nevada law, declined to embrace the appellant’s argument that NRS 107.090, read into NRS
11 116.3116(1), mandates that HOAs provide notice to lenders even absent a request. *Id.*
12 Accordingly, the absence of mandatory notice provisions rendered the statutory scheme facially
13 unconstitutional. *Id.* at 1158–60.

14 *Bourne Valley*’s construction of Nevada law is “only binding in the absence of any
15 subsequent indication from the [Nevada] courts that [the Ninth Circuit’s] interpretation was
16 incorrect.” *Owen v. United States*, 713 F.2d 1461, 1464 (9th Cir. 1983). “[W]here the
17 reasoning or theory of . . . prior circuit authority is clearly irreconcilable with the reasoning or
18 theory of intervening higher authority, [a court] should consider itself bound by the later
19 controlling authority” *Miller v. Gammie*, 335 F.3d 889, 892–93 (9th Cir. 2003). “[A]
20 [s]tate’s highest court is the final judicial arbiter of the meaning of state statutes.” *Sass v.*
21 *California Bd. of Prison Terms*, 461 F.3d 1123, 1129 (9th Cir. 2006) (citing *Gurley v. Rhoden*,
22 421 U.S. 200, 208 (1975)); see also *Knapp v. Cardwell*, 667 F.2d 1253, 1260 (9th Cir. 1982)
23 (“State courts have the final authority to interpret, and, where they see fit, to reinterpret the
24 states’ legislation.”).

1 In *SFR Invs. Pool 1, LLC v. Bank of New York Mellon*, the Nevada Supreme Court
2 expressly declined to follow *Bourne Valley* and held that NRS 107.090 is incorporated into
3 NRS 116.31168, thus requiring that HOAs “provide foreclosure notices to all holders of
4 subordinate interests, even when such persons or entities did not request notice.” 422 P.3d
5 1248, 1253 (Nev. 2018) (en banc). As this Court previously explained, the Nevada Supreme
6 Court’s holding is clearly irreconcilable with the Ninth Circuit’s finding of unconstitutionality
7 because the Ninth Circuit premised its conclusion on NRS Chapter 116’s lack of mandatory
8 notice provisions. *Christiana Tr. v. SFR Invs. Pool 1, LLC*, No. 2:16-cv-00684-GMN-CWH,
9 2018 WL 6603643, at *3 (D. Nev. Dec. 17, 2018). Because the Nevada Supreme Court has
10 since interpreted NRS Chapter 116 as mandating notice, the rationale underlying the *Bourne*
11 *Valley* decision no longer finds support under Nevada law. See *Rodriguez v. AT&T Mobility*
12 *Servs. LLC*, 728 F.3d 975, 979 (9th Cir. 2013) (recognizing that cases are “clearly
13 irreconcilable” where the “relevant court of last resort . . . undercut[s] the theory or reasoning
14 underlying the prior circuit precedent.”); see, e.g., *Toghill v. Clarke*, 877 F.3d 547, 556–60 (4th
15 Cir. 2017).

16 In sum, *Bourne Valley*’s holding that NRS Chapter 116 is facially unconstitutional is
17 clearly irreconcilable with the Nevada Supreme Court’s subsequent pronouncement. Because
18 the Nevada Supreme Court has final say on the meaning of Nevada statutes, *Bourne Valley* is
19 no longer controlling authority with respect to NRS 116.3116’s notice provisions and,
20 consequently, its finding of facial unconstitutionality. Accordingly, to the extent Plaintiff, in its
21 instant Motion, seeks to prevail based upon *Bourne Valley*, the Court rejects this theory.

22 **B. Tender of the Superpriority Portion of HOA’s Lien**

23 Under NRS 116.3116, the holder of a first deed of trust may pay off the superpriority
24 portion of an HOA lien to prevent the foreclosure sale from extinguishing the deed of trust. See
25 *SFR Invs. Pool 1 v. U.S. Bank*, 334 P.3d 408, 414 (Nev. 2014). “[A] first deed of trust holder’s

1 unconditional tender of the superpriority amount due results in the buyer at foreclosure taking
2 the property subject to the deed of trust.” *Bank of Am., N.A. v. SFR Invs. Pool 1, LLC*, 427 P.3d
3 113, 116 (Nev. 2018) (en banc). “[T]he superpriority portion of an HOA lien includes only
4 charges for maintenance and nuisance abatement, and nine months of unpaid assessments.” *Id.*
5 at 117. In addition to a full tender of the superpriority amount, “valid tender must be
6 unconditional, or with conditions on which the tendering party has a right to insist.” *Id.*

7 Here, the evidence indicates that on September 30, 2012, Miles Bauer, on behalf of
8 Plaintiff, sent a letter to HOA’s agent, AMS, alongside a check for \$198.00. (*See* Tender Letter,
9 Ex. 3 to Miles Aff., ECF No. 58-8). Plaintiff calculated that amount based on nine months of
10 owed assessments, at \$22.00 per month. (*See* Pl.’s MPSJ 14:3–8); (Statement of Account, Ex. 2
11 to Miles Aff., ECF No. 58-8). An accounting ledger provided by the HOA prior to the
12 Property’s foreclosure sale confirms Plaintiff’s calculation. (*See* Statement of Account, Ex. 2 to
13 Miles Aff.). Thus, Plaintiff’s tender of the \$198.00 check to AMS undisputedly satisfied the
14 HOA’s outstanding superpriority lien, and AMS received the check before rejecting it. (*See*
15 Tender Letter, Ex. 3 to Miles Aff.); (Confirmation of Receipt, Ex. 4 to Miles Aff., ECF No. 58-
16 8).

17 SFR and HOA, in turn, have failed to produce competing evidence showing that Plaintiff
18 miscalculated the superpriority lien amount, that the lien included nuisance and abatement
19 charges, or that Plaintiff never delivered the letter and accompanying check. The remaining
20 question, therefore, is whether Plaintiff’s tender was either unconditional or with conditions on
21 which Plaintiff had the right to insist.

22 Plaintiff’s Tender Letter, in relevant part, contains the following language:

23 Our client has authorized us to make payment to you in the amount of \$198.00 to
24 satisfy its obligations to the HOA as a holder of the first deed of trust against the
25 property. Thus, enclosed you will find a cashier's check made out to
ASSESSMENT MANAGEMENT SERVICES in the sum of \$198.00, which
represents the maximum 9 months worth of delinquent assessments recoverable

1 by an HOA. This is a non-negotiable amount and any endorsement of said
2 cashier's check on your part, whether express or implied, will be strictly
3 construed as an unconditional acceptance on your part of the facts stated herein
4 and express agreement that BANA's financial obligations towards the HOA in
regards to the real property located at 10108 Glen Aire Avenue have now been
"paid in full."

5 (Tender Letter at 2, Ex. 3 to Miles Aff.)

6 SFR and HOA (collectively "Defendants") argue that the tender was invalid because the
7 tender letter included impermissible conditions. (*See* SFR's Resp. 15:14–17:7); (HOA's Resp.
8 12:2–7). Defendants assert that acceptance of the check was improperly contingent upon
9 agreement with the facts as stated in the letter, including Plaintiff's legal interpretation that the
10 check's amount represented payment in full. (SFR's Resp. 16:10–16:22); (HOA's Resp. 12:8–
11 20). Accordingly, Defendants contend that rejection of Plaintiff's payment was made in good
12 faith. (*See* SFR's Resp. 17:8–18:8).

13 At the outset, the Court notes that one of the purportedly improper paragraphs in the
14 tender letter is identical to the letter the Nevada Supreme Court deemed unconditional and
15 otherwise valid.³ Therefore, to the extent Defendants assign impropriety to language in that
16 paragraph, the argument necessarily fails. Specifically, with respect to the provision that an
17 endorsement would be construed as acceptance of the letter's facts, the Court incorporates the
18 reasoning of the Nevada Supreme Court and finds this language constitutes a condition on
19 which Plaintiff had the right to insist. *Bank of Am., NA.*, 427 P.3d at 117.

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22 ³ The tender letter before the Nevada Supreme Court contained the following paragraph:

23 This is a non-negotiable amount and any endorsement of said cashier's check on your part,
24 whether express or implied, will be strictly construed as an unconditional acceptance on your
25 part of the facts stated herein and express agreement that [Bank of America]'s financial
obligations towards the HOA in regards to the [property] have now been "paid in full."

Bank of Am., NA., 427 P.3d at 118.

1 Moreover, the Court rejects the argument that AMS rejected the tender in good faith
2 because the tender letter purports to absolve Plaintiff of any future liability it may have to
3 HOA. The Court is in accord with the Nevada Supreme Court that the letter’s reference to
4 “facts stated herein,” immediately preceding the language about Plaintiff’s obligations being
5 “paid in full,” can only be reasonably interpreted as applying to the underlying foreclosure
6 proceeding. *Sage Realty LLC Series 2 v. Bank of New York Mellon*, No. 73735, 2018 WL
7 6617730, at *1 (Nev. Dec. 11, 2018) (unpublished) (“The letter refers to ‘the facts stated
8 herein,’ which can only be reasonably construed as contemplating the underlying foreclosure
9 proceeding and not a future scenario in which BNYM might again need to cure a default as to
10 the superpriority portion of the HOA’s lien to protect its first deed of trust.”); *Deutsche Bank*
11 *Nat’l Tr. Co. v. Premier One Holdings, Inc.*, 431 P.3d 55 (Nev. 2018) (unpublished) (same);
12 *Fiducial, LLC v. Bank of New York Mellon Corp.*, No. 71864, 2018 WL 6617727, at *2 (Nev.
13 Dec. 11, 2018) (same).

14 HOA also argues that Plaintiff’s check for \$198.00 was only partial payment because
15 Nevada foreclosure law at the relevant time period was unclear about whether an HOA may
16 include collection costs and attorneys’ fees as part of its lien. (HOA’s Resp. 11:8–12:20).
17 However, the Nevada Supreme Court has expressly rejected the argument that the “legally
18 unsettled” status of foreclosure law at the time disturbs the unconditional nature of an otherwise
19 valid tender. *See Bank of Am., N.A.*, 427 P.3d at 118 (“[A] plain reading of NRS 116.3116
20 indicates that at the time of Bank of America’s [2012] tender, tender of the superpriority
21 amount by the first deed of trust holder was sufficient to satisfy that portion of the lien. Thus,
22 the issue was not undecided.”); *see also BAC Home Loans Servicing, LP v. Aspinwall Court*
23 *Tr.*, No. 69885, 422 P.3d 709, 2018 WL 3544962, at *1 (Nev. July 20, 2018) (unpublished). In
24 light of this authority, the Court finds that the purported nebulous nature of Nevada law during
25 the relevant time neither impacts Plaintiff’s valid tender nor justifies AMS’s rejection.

1 Because Plaintiff's tender satisfied the HOA's superpriority lien, Defendants cannot
2 prevail even if the Court were to find SFR was a bona fide purchaser for value. "A foreclosure
3 sale on a mortgage lien after valid tender satisfies that lien is void, as the lien is no longer in
4 default." *See Bank of Am., N.A.*, 427 P.3d at 121 ("Because a trustee has no power to convey an
5 interest in land securing a note or other obligation that is not in default, a purchaser at a
6 foreclosure sale of that lien does not acquire title to that property interest."). Accordingly, in
7 light of Plaintiff's tender, SFR's status as a bona fide purchaser is immaterial.

8 Based upon the foregoing, the Court concludes that Plaintiff's tender satisfied HOA's
9 superpriority lien and thus invalidated the ensuing sale to the extent it extinguished Plaintiff's
10 DOT. While the sale remains intact, Plaintiff's DOT continues to encumber the Property and
11 SFR's interest is subject to this encumbrance. Accordingly, Plaintiff's Motion for Partial
12 Summary Judgment, as to its quiet title claim, is granted. The Court denies SFR's Motion with
13 respect to its quiet title claim against Plaintiff.

14 **C. Standing to Enforce the DOT**

15 In addition to finding that the DOT continues to encumber the Property, Plaintiff has
16 standing to assert its quiet title claim. That is, SFR argues that Plaintiff does not have standing
17 to enforce the DOT because Plaintiff does not provide proof that the promissory note and DOT
18 were transferred to Plaintiff, and does not provide the original writing or certified copy showing
19 the chain of ownership for the note and DOT. (SFR's Resp. 7:21–11:7).

20 To the extent SFR argues that Plaintiff lacks standing to enforce the DOT because it has
21 not produced evidence that the promissory note was endorsed in Plaintiff's favor, the Court
22 disagrees. It is well established that an action to quiet title "may be brought by any person
23 against another who claims an estate or interest in real property, adverse to the person bringing
24 the action, for the purpose of determining such adverse claim." *Chapman v. Deutsche Bank*
25 *Nat'l Trust Co.*, 302 P.3d 1103, 1106 (Nev. 2013). Moreover, Plaintiff provides documentation

1 showing its chain of title regarding that DOT. (Assignment, Ex. C to Pl.’s MPSJ, ECF No. 58-
2 3) (showing a transfer to “BAC Home Loans Servicing, LP FKA Countrywide Home Loan
3 Servicing, LP); (Merger Certificate, Ex. D to Pl.’s MPSJ, ECF No. 58-4) (showing a merger of
4 BAC Home Loans Servicing with Bank of America, N.A.).

5 Because SFR does not produce evidence to rebut the chain of title for the DOT in this
6 case, there is no dispute of material fact about Plaintiff’s assigned interest here. Plaintiff thus
7 has articulated its chain of title, provided proper documentation, and has standing to pursue its
8 quiet title claim. *See USROF IV Legal Title 2015-1 by U.S. Bank Nat’l Ass’n v. White Lake*
9 *Ranch Ass’n*, No. 3:15-cv-00477-MMD-CBC, 2019 WL 539037, at *3 (D. Nev. Feb. 11, 2019)
10 (“[T]he Court finds that as the holder of the DOT . . . [the holder] has standing to challenge the
11 HOA Sale and to contend that the DOT has not been extinguished.”).

12 **D. SFR’s Remaining Claims**

13 SFR seeks summary judgment on its quiet title claim against Borrowers on the basis that
14 “it obtained title of the unit’s owners without equity or right of redemption” by purchasing the
15 Property. (SFR’s MSJ 21:5–11). Because the Court holds that the sale remains intact and given
16 SFR’s evidence of its interest in the Property relative to that of Borrowers’, SFR’s Motion
17 against Borrowers is granted to the extent Borrowers assert any adverse interest in the
18 Property.⁴ *See Bank of Am., N.A. v. Falcon Point Ass’n*, No. 2:16-cv-00814-GMN-CWH, 2018
19 WL 4682317, at *8 (D. Nev. Sept. 28, 2018); *Deutsche Bank Nat’l Tr. Co. v. Foothills at S.*
20 *Highlands Homeowners Ass’n*, No. 2:16-cv-00245-GMN-PAL, 2018 WL 3613984, at *5 (D.
21 Nev. July 27, 2018).

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25 ⁴ As Borrowers have not appeared in this action, SFR has moved for clerk’s entry of default, (ECF Nos. 55, 56),
which the clerk of court subsequently entered, (ECF No. 57).

1 As to SFR's request for an injunction pending a determination by the Court concerning
2 the parties' respective rights and interests, the Court's grant of summary judgment for Plaintiff
3 moots this claim, and it is therefore dismissed.

4 **E. Plaintiff's Remaining Claims for Breach of NRS 116.1113, Wrongful**
5 **Foreclosure, and Injunctive Relief**

6 In its prayer for relief, Plaintiff primarily seeks an "order declaring that SFR purchased
7 the property subject to [Plaintiff's] senior deed of trust." (*See* Compl. 14:18–19). The other
8 relief requested—with the exception of injunctive relief—is phrased in the alternative. (*See id.*
9 14:20–24). Therefore, because the Court grants summary judgment for Plaintiff on its quiet
10 title claim, Plaintiff has received the relief it requested. Accordingly, the Court dismisses
11 Plaintiff's second and third causes of action for breach of NRS 116.1113 and wrongful
12 foreclosure, respectively.

13 With regard to Plaintiff's request for an injunction pending a determination by the Court
14 concerning the parties' respective rights and interests, the Court's grant of summary judgment
15 for Plaintiff moots this claim, and it is therefore dismissed.

16 **IV. CONCLUSION**

17 **IT IS HEREBY ORDERED** that Plaintiff's Motion for Partial Summary Judgment,
18 (ECF No. 58), is **GRANTED** pursuant to the foregoing.

19 **IT IS FURTHER ORDERED** that SFR's Motion for Summary Judgment, (ECF No.
20 59), is **GRANTED in part** and **DENIED in part**. SFR's Motion, with respect to its quiet title
21 claim against Borrowers is **GRANTED**. SFR's Motion is **DENIED** with respect to its quiet
22 title claim against Plaintiff, and **DENIED as moot** with respect to its claim for injunctive relief.

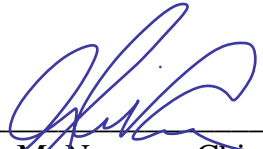
23 **IT IS FURTHER ORDERED** that HOA's Motion for Summary Judgment, (ECF No.
24 60), is **GRANTED in part** and **DENIED in part**. HOA's Motion is **GRANTED** as to
25

1 Plaintiff's claims for breach of NRS 116.1113 and wrongful foreclosure. HOA's Motion is
2 **DENIED** as to Plaintiff's quiet title claim.

3 **IT IS FURTHER ORDERED** that Plaintiff's Motion for Leave to File Supplemental
4 Authority, (ECF No. 75), is **DENIED as moot**.

5 **IT IS FURTHER ORDERED** that the parties shall file a joint status report within
6 twenty-one (21) days of this Order's issuance identifying any remaining non-moot claims and
7 how the parties intend to proceed.

8 **DATED** this 29 day of March, 2019.

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12 Gloria M. Navarro, Chief Judge
13 United States District Court
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